

No 5:07-CV-426 (U.S.D.C., E.D.N.C.)

Defendants.

Fed. R. Civ. P. 56(c)

STATE OF NORTH CAROLINA)
) ss.:
COUNTY OF CUMBERLAND)

AFFIDAVIT OF CLARENCE E. BRIGGS, III

COMES NOW the affiant Clarence E. Briggs, who, after being first duly sworn, does
depose and state upon oath as follows:

1. I am the President and Chief Executive Officer of Plaintiff Advanced Internet Technologies, Inc. (“AIT”) in the above matter. I make this Affidavit in opposition to the motion for summary judgment of Defendant Dell, Inc. (“Dell”) pursuant to Rule 56(f) of the Federal Rules of Civil Procedure.

2. AIT can prove four categories of damages to a reasonable certainty. First, AIT is seeking damages for the money AIT paid to lease or purchase Dell Optiplex GX270 and GX280 computers. It is my understanding that Dell is not seeking summary judgment on this category of damage.

3. The second category of damages are for cancelled contracts in the amount of \$15,804,623 which is the amount of revenue AIT would have received from its contracts with customers who ultimately cancelled their contracts following failure(s) of a Dell Optiplex GX270 or GX280 computers. AIT's Chief Information Officer, Michael Roberts will submit an affidavit in that regard.

4. This affidavit will speak to the third and fourth categories of damage:

- a. discounts on existing contracts for single user web servers which AIT was forced to provide following failures of Dell small form factor desktop computers; and
- b. increase in payroll expenses AIT incurred as a result of having to hire additional employees to respond to customer complaints arising from the failure of Dell small form factor desktop computers and to service and repair those computers in order to put customers back into service as quickly as possible.

5. With regard to discounts on existing contracts, in response to the massive number of Dell computer failures AIT began to experience in 2004 due to what we later learned were defective capacitors, I implemented a policy whereby customers who were the victim of computer failures and who threatened to cancel their contracts would be given discounts on contracted for hosting plans going forward.

6. Discounts on contracts going forward were only given to customers who experienced Dell small form factor computer failures. Customers who complained of other issues were either given credits or refunds or were not given any concessions. Discounts are the

last resort in order to keep a customer because they relate directly to reductions in margins and revenue.

7. As set forth in the report I directed Matthew Macomber to prepare and which I provided at my deposition on February 3-4, 2010, AIT can document \$21,708,731 in discounts given to customers with existing plans for the years 2004 through and including 2007. Those customers would necessarily have suffered Dell desktop computer failures in order to qualify for discounted plans.

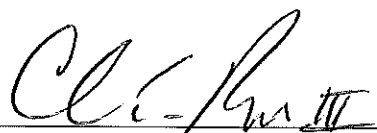
8. The only other discounts that were ever given to customers were for certain promotions which AIT offered from time to time. However, I have confirmed that promotional discounts were not included in the report I provided at my deposition.

9. With regard to increased payroll, because of the massive number of Dell computer failures AIT began to experience in 2004 due to what we later learned were defective capacitors, AIT employees charged with providing customer support and servicing computer hardware were quickly overwhelmed.

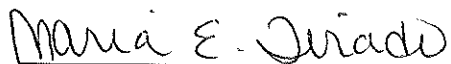
10. Solely as a result of this situation, AIT began a period of frantic hiring of additional customer support representatives and computer servicing and repair personnel. To give some idea of the scope of this endeavor as was caused by Dell's defective computers, on January 1, 2004, AIT had 80 employees on payroll servicing 1,036 customers on dedicated OptiPlex plans. By August 2005, AIT had 130 employees on payroll servicing 2,309 customers on dedicated OptiPlex plans.

11. Following our decision to migrate customers off of the defective Dell computers, payroll began to decline as we no longer had the need for the large number of service and support

personnel we had been forced to hire. As a result, by August 2008, AIT had 49 employees on payroll.


Clarence E. Briggs, III

Sworn to and subscribed before me
this 28th day of May 2010


Notary Public
Commission expires 8-16-14

